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No. 10-61

In The

Supreme Court of the United States

STEVEN DWORKIN, KRISTEN HENRY,
ROXY HAYES, and KAREN MILLS,
Petitioners,

v.

JOHN F. TAMBURO,
doing business as MAN'S BEST FRIEND
SOFTWARE, and VERSITY CORPORATION,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

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BRIEF FOR RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

1. Whether the Petitioners have presented compelling reasons to grant the Petition, where the Seventh Circuit's Opinion reversing the District Court's dismissal for want of personal jurisdiction, after careful analysis of the *Calder v. Jones* factors, does not conflict with a decision of this Court or a Court of Appeals nor does it implicate an important federal question that has not been settled by this Court.

AFFILIATION STATEMENT

Respondent Versity Corporation, a dissolved Illinois corporation, was wholly owned by Respondent John F. Tamburo, and has no subsidiaries or affiliated companies.

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COUNTERSTATEMENT[1]

Respondent Tamburo, doing business as Man's Best Friend Software, lives and operates his business in Illinois. He designs software for use by dog breeders and noncommercial dog enthusiasts. One of his products, an online database called The Breeder's Standard, provides customers with access to dog-pedigree information. To create the database, Tamburo developed an automated computer program that scanned the Internet for information about dog pedigrees. He then incorporated the data he retrieved into The Breeder's Standard.

Petitioners Kristen Henry, Roxanne Hayes, Karen Mills, and Steven Dworkin are proprietors of public websites that provide free access to dog-pedigree information. Henry, a Colorado citizen and resident, also breeds and shows dogs. Hayes, a Michigan citizen and resident, raises, shows, and "places" dogs but does not commercially breed them. Mills, a citizen and resident of Ohio, raises and shows dogs. Dworkin, a Canadian citizen who resides in Ottowa, also raises and shows dogs. [2]

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[1] The Petitioners' statement of facts is argumentative, incorrect and incomplete. The factual statement provided by the Respondents is taken directly from the "Background" summary set forth by the Seventh Circuit in the opinion below. *See generally* Pet. App. 4a – 6a.

[2] Dworkin died in 2008 while the Respondents' appeal was pending before the Seventh Circuit. Petitioners' attorney now represents Dworkin's estate in this litigation.

Tamburo pulled some of the information included in The Breeder's Standard from the websites operated by Henry, Hayes, Mills, and Dworkin. In retaliation Henry, Hayes, and Mills posted statements on their websites accusing Tamburo of "theft," "hacking," and "selling stolen goods," and calling on readers to boycott his products. They also posted Tamburo's Illinois address on their websites and urged readers to contact him to harass him and otherwise complain.

Dworkin retaliated in a different way. He emailed Tamburo and demanded that he remove the "blatent [sic] theft of data" from The Breeder's Standard "within 5 days." If Tamburo failed to do so, Dworkin threatened to "publish to each and every dog[-]based list the sleazy methods" of Tamburo's operation. When Tamburo did not comply, Dworkin emailed "all persons who had a free online database of dog pedigrees on the Internet" saying that Tamburo's product contained pedigree data that was "stolen," "mined," and "harvested" for improper "commercial use," and suggested that all proprietors of online dog-pedigree databases "band together to stop this theft" of their data.

The fifth defendant was Wild Systems Pty Ltd., an Australian software company that offers a pedigree software program called Breedmate. Wild Systems also runs a private online Yahoo! email listserve for customers who have purchased the Breedmate software. Ronald DeJong, the owner and

president of Wild Systems, manages this email list and must approve any message sent to it. The individual defendants sent DeJong messages for posting on the Breedmate listserve; these messages, like the others, protested that Tamburo had stolen their data.

DeJong in turn transmitted these messages to the Breedmate listserve. Later, DeJong and the individual defendants organized a closed Internet chat group - called the "APDUG Group"[3] - for users of Alfirin software, a product used to manage dog-pedigree databases. In messages posted to the APDUG Group, the individual defendants again accused Tamburo of "theft," "selling stolen goods," and "hacking."

Respondent Tamburo filed suit in the United States District Court for the Northern District of Illinois, *pro se*, on May 11, 2004. In 2005, Respondent Versity Corporation, although dissolved, was added to the lawsuit[4] and Mr. Ian Brenson undertook to represent the Respondents.

On October 9, 2007, the District Court granted Petitioners' motion to dismiss the case for lack of personal jurisdiction. (Pet. App. 42a-65a). The Respondents moved to transfer the case to the Western District of Michigan, Petitioner Hayes'

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[3] "APDUG" stands for Alfirin Pedigree Database Users Group.

[4] Versity appears as a plaintiff by virtue of 805 ILCS 5/12.80, the Illinois statute authorizing post-dissolution survival of actions.

home district. That motion was denied on May 9, 2008. (Pet. App. 33a-41a).

The Respondents timely appealed to the Court of Appeals for the Seventh Circuit. The panel, consisting of Circuit Judges Bauer, Kanne and Sykes, issued a unanimous opinion, reversing the dismissal for lack of jurisdiction against four of the defendants and remanding the case for further proceedings. *Tamburo v. Dworkin*, 601 F.3d 693 (7th Cir. 2010). (Pet. App. 1a-32a).

The Petitioners filed the instant petition on July 7, 2010, and Respondents waived response on July 14, 2010. This Court called for a response on September 2, 2010.

REASONS FOR DENYING THE PETITION

The Petitioners have presented no compelling reasons for their Petition for Writ of *Certiorari* to be granted. First, the Seventh Circuit properly analyzed the facts of this case pursuant to the framework provided by *Calder v. Jones*, which is the most suitable existing standard, and determined that the exercise of personal jurisdiction over the four remaining defendants would be proper, even under the most restrictive and rigorous interpretation of relevant law.

Second, the circuit "splits" that the Petitioners attempt to highlight are illusory. In fact, they are

the result of a serious misreading of the Seventh Circuit's opinion below. The involvement of this Court is simply not necessary at this time.

I. This Court Should Deny Certiorari Because The Alleged Facts Fit Squarely Within The Seventh Circuit's *Calder* Analysis.

In *Tamburo v. Dworkin*, 601 F.3d 693 (7th Cir. 2010), a unanimous panel of the Seventh Circuit painstakingly reviewed both the Petitioners' egregious tortious conduct, directed at the forum state, and the significant injuries suffered by the Respondents in that state. In so doing the Seventh Circuit demonstrated that this case is a textbook example of jurisdictional contacts ample enough to satisfy even the most rigorous scrutiny. Relying upon this Court's precedent in *Calder v. Jones*, 465 U.S. 783 (1984), the Seventh Circuit found that the alleged jurisdictional facts "suffice[d] to establish personal jurisdiction over these defendants under either a broad or a more restrictive view of *Calder*." *Tamburo*, 601 F.3d at 706.

The court below summarized the relevant facts upon which it based its analysis:

> Dworkin, Henry, Hayes, and Mills are each alleged to have published false and defamatory statements about Tamburo, either on their public websites or in blast emails to other proprietors of online dog-

> pedigree databases. In some of these messages, readers were encouraged to boycott Tamburo's products; in others, Tamburo's Illinois address was supplied and readers were urged to contact and harass him. The complaint also alleges that Dworkin personally contacted Tamburo by email, accusing him of "theft" and demanding that he remove the "stolen" data from The Breeder's Standard. Dworkin threatened to expose Tamburo's "theft" to the online dog-pedigree community if he did not comply. Dworkin, Henry, Hayes, and Mills engaged in this conduct with the knowledge that Tamburo lived in Illinois and operated his business there; their affidavits do not deny this. Thus, although they acted from points outside the forum state, these defendants specifically aimed their tortious conduct at Tamburo and his business in Illinois with the knowledge that he lived, worked, and would suffer the "brunt of the injury" there.

Tamburo, 601 F.3d at 706.

The starting point for the Seventh Circuit's analysis was the "express aiming" requirement set forth in *Calder*. First, the court below noted that "[t]he circuits are divided over whether *Calder's* 'express aiming' inquiry includes *all* jurisdictionally relevant intentional acts of the defendant or only those acts that are intentional *and* alleged to be tortious or otherwise wrongful." *Id.* at 704 [emphasis

retained]. Noting a potential split on this issue between the Third and Tenth Circuits, the Seventh Circuit recognized that

> [w]e need not take sides in this debate. Tamburo alleges that the individual defendants intentionally published defamatory statements on their websites or in blast emails. He further alleges that this conduct tortiously interfered with his business, constituted a trade libel, and that the defendants entered into a conspiracy to commit these wrongful acts against him. These are intentional-tort allegations, bringing this case squarely within the *Calder* formula even if the scope of the inquiry is more narrowly focused on the alleged tortious acts.

Id.

Second, the Seventh Circuit addressed the tension between two predecessor cases in its own circuit, which had differing views as to whether the *Calder* test should be applied broadly or restrictively, *Janmark v. Reidy,* 132 F.3d 1200 (7th Cir. 1997), and *Wallace v Heron,* 778 F.2d 391 (7th Cir. 1985). *Wallace* had been the authority relied upon by the District Court in dismissing the instant case. The Seventh Circuit tightened its interpretation of the "effects test," finding that the broad standard laid down by Judge Easterbrook in

Janmark, which had been read to require only a forum state injury, still required "something more." *Tamburo*, 601 F.3d at 705, n.8.

The Seventh Circuit went on to cite with approval *Indianapolis Colts, Inc. v. Metropolitan Baltimore Football Club Ltd. Partnership*, 34 F.3d 410, 412 (7th Cir. 1994), and its conclusion that "the defendant had done more than brought about an injury to an interest located in a particular state." The Seventh Circuit analyzed its broad holding in *Janmark* and reconciled it to *Indianapolis Colts* and *Wallace*, concluding that,

> [b]oth *Wallace* and *Indianapolis Colts* read *Calder* to require a forum-state injury *and* "something more" directed at that state before jurisdiction over a foreign defendant may be considered proper. Importantly, however, the holding in *Janmark* ultimately focused on more than the fact that the injury had occurred in Illinois; *Janmark's* jurisdictional conclusion was premised on the Illinois-based injury and the fact that the defendant acted with the purpose of interfering with sales originating in Illinois. Thus, despite its broad language about *Calder*, *Janmark* ultimately considered the relationship between the allegedly tortious conduct and the forum state itself.

Tamburo, 601 F.3d at 705-06.

Finally, turning to whether Respondents' injury arises out of the Petitioners' contacts with the forum state, as required by *Burger King Corp. v. Rudzewicz*, 471 U.S. 462 (1985), the Seventh Circuit noted a circuit split, but concluded that,

> [u]nder even the most rigorous approach to the determination of whether the plaintiff's injury "arises out of" the defendant's contacts with the forum state, Tamburo's injury clearly does. We have already concluded that Dworkin, Henry, Hayes, and Mills expressly aimed their allegedly tortious conduct at Tamburo and his Illinois-based business for the purpose of causing him injury there; these "contacts" with the forum state are the cause in fact and the legal cause of Tamburo's injury. That is, Tamburo's claims arise directly out of the individual defendants' contacts with Illinois.

Tamburo, 601 F.3d at 709.

Significantly, the Seventh Circuit chose not to adopt the standard set forth in *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997), urged upon it by the Petitioners, in this intentional tort case. In *Zippo*, an Internet domain name dispute, the District Court proposed a test to determine minimum contacts to support personal jurisdiction according to a sliding-scale. In such cases, "the exercise of jurisdiction is determined by examining the level of interactivity and commercial

nature of the exchange of information that occurs on the Web site." 952 F. Supp at 1124.

Citing *Hy Cite Corp. v. Badbusinessbureau.com, L.L.C.*, 297 F. Supp. 2d 1154 (W.D. Wis. 2004), the court below reasoned,

> As a more general matter, we hesitate to fashion a special jurisdictional test for Internet-based cases. *Calder* speaks directly to personal jurisdiction in intentional-tort cases; the principles articulated there can be applied to cases involving tortious conduct committed over the Internet.

Tamburo, 601 F.3d at 703, n.7. In *Hy Cite*, the Western District of Wisconsin dismissed on the motion of the Arizona-based defendants for a lack of the "express aiming" required by *Calder*. 297 F. Supp. 2d at 1165-66. The *Hy Cite* court rejected the *Zippo* standard, finding that:

> [I]n *Zippo*, the court did not explain under what authority it was adopting a specialized test for the internet or even why such a test was necessary. The Supreme Court has never held that courts should apply different standards for personal jurisdiction depending on the type of contact involved. To the contrary, the Court "long ago rejected the notion that personal jurisdiction might turn on 'mechanical' tests." The purpose of the "minimum contacts" test set forth in

> *International Shoe* was to create a standard flexible enough that specialized tests were not needed.

Hy Cite, 297 F. Supp. 2d at 1160 (*citing Burger King Corp. v. Rudzewicz*, 471 U.S. 462, 478 (1985); *International Shoe Co. v. Washington*, 326 U.S. 310, 319 (1945)).

This court has created a well-reasoned and timeless standard in *Calder*. *Zippo* incorrectly concentrates on the *medium* by which a tort is transmitted, instead of relying on the relationship between the tortfeasor and the forum state. In so doing, the "*Zippo* test" needlessly complicates jurisdictional analysis. Moreover, the use of a non-specialized test is preferable to the limited and specialized test set forth in *Zippo*:

> As [the Chief Judge of the Seventh Circuit] has observed in the context of writing about technology, specialized tests are often "doomed to be shallow and to miss unifying principles . . . [T]he best way to learn the law applicable to specialized endeavors is to study general rules."

Hy Cite, 297 F. Supp. 2d at 1160 (*citing* Frank H. Easterbrook, *Cyberspace and the Law of the Horse*, U. Chi. Legal F. 207 (1996)).

The Seventh Circuit unanimously utilized the appropriate analytical framework set forth in *Calder* for its jurisdictional analysis. It did not need to go beyond this framework to decide that the exercise of personal jurisdiction over the Petitioners was proper. It addressed any apparent conflicts, whether within its own circuit or with other circuits, and reconciled them. The court found that the Petitioners' tortious acts expressly aimed into the forum state satisfied even the strictest jurisdictional analysis. The Seventh Circuit properly recognized the "something more" that is required for minimum contacts, and found it in the facts of this case. Thus, this case is not a suitable candidate for this court's review.

II. Petitioners' Illusory Conflict Between The Circuits Results From A Misreading Of The Seventh Circuit's Opinion Below.

A. The "Split" Between The Seventh And Fifth Circuits Is Illusory.

In their submission, the Petitioners attempt to argue that *Revell v. Lidov*, 317 F.3d 467 (5th Cir. 2002), conflicts with the Seventh Circuit's opinion in this case. Pet. 15-19. The Petitioners' fundamental misreading of the *Tamburo* opinion lies at the heart of their incorrect claim that a circuit conflict exists on the issue of what is required for the exercise of personal jurisdiction in an online intentional tort setting.

In *Revell*, the plaintiff sued Lidov and Columbia University for publishing an allegedly defamatory article on Columbia's "BBS" web site in New York. The *Revell* court affirmed the Texas District Court's dismissal of the case pursuant to FED. R. CIV. P. 12(b)(2), because the plaintiff's injury, standing alone, was insufficient to constitute minimum contacts for personal jurisdiction. The Fifth Circuit stated:

> We find several distinctions between this case and *Calder* — insurmountable hurdles to the exercise of personal jurisdiction by Texas courts. First, the article written by Lidov about Revell contains no reference to Texas, nor does it refer to the Texas activities of Revell, and it was not directed at Texas readers as distinguished from readers in other states. Texas was not the focal point of the article or the harm suffered, unlike *Calder*, in which the article contained descriptions of the California activities of the plaintiff, drew upon California sources, and found its largest audience in California. This conclusion fits well with our decisions in other intentional tort cases where the plaintiff relied upon *Calder*. In those cases we stated that the plaintiff's residence in the forum, and suffering of harm there, will not alone support jurisdiction under *Calder*.

Revell, 317 F.3d at 473.

The Petitioners seize on the facts of the *Revell* case to point up what they see as a contrast with those in the instant case. If the Seventh Circuit had indeed interpreted *Calder* to require nothing more than an injury occurring in the forum state, there might have been some validity to their argument. However, the holdings in *Revell* and the instant case are entirely consistent. Had the Fifth Circuit (or any other Circuit) addressed the factual allegations in this case, it would have reached the same conclusion as the Seventh Circuit, which is that the exercise of personal jurisdiction is appropriate and satisfies due process.

Where the *Revell* court noted that "the article ... contains no reference to Texas," the Seventh Circuit noted that "Tamburo's Illinois address was supplied and readers were urged to contact and harass him." Where the *Revell* court noted, "nor does it refer to the Texas activities of Revell," the Seventh Circuit noted that "Dworkin, Henry, Hayes, and Mills engaged in this conduct with the knowledge that Tamburo lived in Illinois and operated his business there." *Revell*, 317 F.3d at 473; *Tamburo*, 601 F.3d at 706.

> Knowledge of the particular forum in which a potential plaintiff will bear the brunt of the harm forms an essential part of the *Calder* test. The defendant must be chargeable with knowledge of the forum at which his conduct is directed in order to reasonably anticipate being haled into court

> in that forum, as *Calder* itself and numerous cases from other circuits applying *Calder* confirm.

Revell, 317 F.3d at 475-76; *see also Tamburo*, 601 F.3d at 707 (*citing Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1071 (10th Cir. 2008)) ("[t]ortious acts aimed at a target in the forum state and undertaken for the express purpose of causing injury there are sufficient to satisfy *Calder's* express-aiming requirement").

The "effects test," utilized by the Seventh Circuit is consistent with case-law from the Third, Ninth and Tenth Circuits. The test set forth in the opinion below has been adopted as a standard for other courts:

> *Calder* thus suggests three requirements for personal jurisdiction in this context: (1) intentional conduct (or "intentional and allegedly tortious" conduct); (2) expressly aimed at the forum state; (3) with the defendant's knowledge that the effects would be felt-that is, the plaintiff would be injured-in the forum state.

See, e.g., Baldwin v. Fischer-Smith, 315 S.W.3d 389, 393 (Mo. App. 2010) (*citing Tamburo*, 601 F.3d at 703).

The Petitioners are simply wrong when they argue that the Fifth Circuit and Seventh Circuit rely upon conflicting interpretations of *Calder*.

B. The Seventh Circuit, In Harmony With Its Sister Circuits And Supreme Court Precedent, Requires More Than Mere Injury In The Forum State To Consider Tortious Conduct "Expressly Aimed" At The Forum State.

Not only is there a lack of conflict between current case-law in the Seventh and Fifth Circuits, there is simply no conflict between the Seventh and the other Circuits that have analyzed similar facts. Nonetheless, the Petitioners doggedly strive to argue that the Seventh Circuit's decision in *Tamburo* "essentially interpreted the 'expressly aimed' prong to require only that a defendant knows where a plaintiff lives and that an injury occurs in the forum state for that defendant to be brought in to court within the forum state." Pet. 24-25.

As explained in detail in Section I *supra*, the Seventh Circuit found that the Petitioners intentionally targeted Illinois and made it the focal point of the tort when they published the Respondents' Illinois address to incite and coordinate third parties to contact the Respondents and harass them, and when they transmitted extortive threats to the Respondents in Illinois. *Tamburo*, 601 F.3d at 706. "These allegations suffice to establish personal jurisdiction over these

defendants under either a broad *or* a more restrictive view of *Calder*." *Id.* [emphasis retained]. The Seventh Circuit noted that "[t]ortious acts aimed at a target in the forum state and undertaken for the express purpose of causing injury there are sufficient to satisfy *Calder's* express-aiming requirement." *Id.* at 707. This is entirely consistent with the supposedly conflicting series of cases cited by the Petitioners. Only by misreading the holding in *Tamburo* can the Petitioners concoct a conflict amongst the Circuits.

Thus, the Petitioners' attempt to argue that the Seventh Circuit's holding in the instant case is at odds with that of the Third Circuit in *IMO Industries, Inc. v. Kiekert AG*, 155 F.3d 254 (3d Cir. 1998, a case where the Third Circuit laid out the *Calder* requirements in almost identical language to that used in by the Seventh Circuit. That court emphasized that "the forum was the focal point of the tortious activity in the sense that the tort was 'expressly aimed' at the forum. Essential was a corollary finding that the defendants knew that the "brunt" of the injury caused by their tortious acts would be felt by the plaintiff in the forum." *IMO*, 155 F.3d at 261.

This is the same standard utilized by the Seventh Circuit in *Tamburo*, when faced with a fact pattern demonstrating that the forum was the focal point of the tort – the Respondents were an Illinois citizen and an Illinois corporation. The Petitioners "expressly aimed" their tortious activity into Illinois

by coordinating and inciting third-parties to contact the Respondents in Illinois to harass them, supplying them with the Respondents' Illinois contact information. *Tamburo,* 601 F.3d at 697.

The Petitioners highlight *IMO's* criticism of *Janmark*; however, the Seventh Circuit had already discussed this in the instant case, noting that "despite its broad language about *Calder*, *Janmark* ultimately considered the relationship between the allegedly tortious conduct and the forum state itself." *Tamburo,* 601 F.3d at 706, n.8. Rather than aggravating or even maintaining a circuit split, the Seventh Circuit reined in overbroad interpretations of *Janmark*, thereby resolving superficial differences between the circuits. Indeed, the *Tamburo* court cited *IMO* as a basis for its three-point *Calder* test. *Tamburo,* 601 F.3d at 703. Thus, the Seventh Circuit lined up with the Third and Tenth Circuits and their interpretation of *Calder's* "effects test."

The Petitioners next contend that *ESAB Group, Inc. v. Centricut, Inc.*, 126 F.3d 617 (4th Cir. 1997), "directly conflicts with the Seventh Circuit decision below." The Petitioners allege that their conduct, as in *ESAB*, "has been directed throughout the United States." Pet. 29. However, this is disingenuous in the extreme. The Petitioners assembled and directed their efforts at *Illinois*. Their efforts were designed to collect the efforts of third parties from across the world and aim them into Illinois, with the specific intention of causing harm to a citizen of and business in Illinois. They expressly targeted the

forum, circulating the Respondents' Illinois contact information along with their entreaties to harass the Respondents. In so doing, they aimed their libelous and otherwise unlawful activities directly at the Respondents in Illinois.

This is in stark contrast to the facts in *ESAB*, where the court found that "[t]he only South Carolina 'contact' related to this suit is that Centricut and Aley knew that the sales leads that Bergen supplied might, if fruitful, ultimately result in less sales to the ESAB Group, which was headquartered in South Carolina." *ESAB*, 126 F.3d at 626. The *ESAB* defendants' acts were not focused on South Carolina, whereas the Petitioners' acts in this case were aimed like a laser at Illinois, and expressly intended to cause injury there.

"[A]lthough the place (of injury) is plainly relevant to the inquiry, it must ultimately be accompanied by the defendant's own contacts with the state if jurisdiction over the defendant is to be upheld." *Id.* The opinion below described the strong contacts between the Petitioners and Illinois, and found jurisdiction accordingly. The Seventh Circuit's decision in this case is consistent with the holding in *ESAB;* the opinion below even cites *ESAB* as representing a more restrictive view of *Calder*. *Tamburo*, 601 F.3d at 704. However, the court held that the Petitioners' contacts with Illinois "establish personal jurisdiction over these defendants under either a broad or a more restrictive view of *Calder*." *Id.* at 706.

Next, the Petitioners cite a Ninth Circuit case, *Bancroft & Masters, Inc. v. Augusta National Inc.*, 223 F.3d 1082 (9th Cir. 2000) (*overruled in part on other grounds by Yahoo! Inc. v. La Ligue Contre Le Racisme*, 433 F.3d 1199, 1207 (9th Cir. 2006)) (en banc), as developing the theme of *ESAB*. However, *Bancroft* was also decided consistently with the case below.

This Court need look no further than the Petitioners' own submission, which ironically makes the Respondents' own argument by describing similar facts to those at hand. "The Ninth Circuit found the test met when the letters sent by ANI were expressly aimed at Bancroft, targeted them individually as a business in California, and ANI knew that the effect of their letters would be felt in California. *Id.* at 1088." (Pet. 30). *See Tamburo*, 601 F.3d at 706 (the Petitioners orchestrated and encouraged third parties to harass the Respondents in their home state, after writing directly to them in Illinois to threaten with a campaign of defamation as retaliation for the Respondents' lawful activities).

Finally, the Petitioners attempt to create a conflict, where none exists, between the Seventh Circuit and the Tenth Circuit arising from that court's decision in *Dudnikov v. Chalk & Vermilion Fine Arts, Inc.*, 514 F.3d 1063, 1075 (10th Cir. 2008). (Pet. at 30-31). This is really a stretch, given that the *Tamburo* court cited *Dudnikov* favorably, discussing it at some length. *Tamburo*, 601 F.3d at

707-08. Contrary to the Petitioners' arguments, the Seventh Circuit did not disagree with *Dudnikov*, but found that "[t]ortious acts aimed at a target in the forum state and undertaken for the express purpose of causing injury there are sufficient to satisfy *Calder's* express-aiming requirement. *Id.*; *see Dudnikov*, 514 F.3d at 1076 ("Defendants' express aim in acting was to halt a Colorado-based sale by a Colorado resident, and neither the lack of defendants' physical presence in Colorado nor the fact that they used a California-based entity to effectuate this purpose diminish this fact").

Contrary to the Petitioners' assertions that the circuits are in conflict, the different circuits have utilized the *Calder* test across the board. Recently, the Eleventh Circuit has come down the same way:

> These allegations satisfy the Calder effects test for personal jurisdiction—the commission of an intentional tort, expressly aimed at a specific individual in the forum whose effects were suffered in the forum. The Constitution is not offended by the exercise of Florida's long-arm statute to effect personal jurisdiction over Lovelady because his intentional conduct in his state of residence was calculated to cause injury to [Plaintiff] in Florida.

Licciardello v. Lovelady, 544 F.3d 1280, 1288 (11th Cir. 2008).

In sum, there is neither truth nor substance to the Petitioners' arguments. The Seventh Circuit has not struck out on its own with an aberrant decision that requires correction. The unanimous court in *Tamburo* issued an opinion that carefully analyzed the facts and applied this Court's existing precedent to those facts to find a clear case for the exercise of personal jurisdiction over non-resident defendants. The opinion below was consistent with the interpretation of other circuits that have examined similar jurisdictional issues.

The analysis in *Calder* is vital and timeless. Courts that have addressed the issue of personal jurisdiction in the Internet Age have found that *Calder* provides a flexible and useful framework to aid in their inquiries. There is simply no reason to visit this issue at this time. The Petitioners have presented no compelling reasons for their Petition for Writ of *Certiorari* to be granted.

CONCLUSION

The Petitioners have not established any compelling reasons for this Court to grant their Petition. Therefore, the Respondents respectfully request that their Petition be denied.

Respectfully Submitted,

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